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ABSTRACT

A law-based dissertation which contains a 400-page legal reference guide for public school teachers and administrators in the area of teacher-employer relations is mentioned in this speech. A case law approach was utilized in understanding the issues involved in teacher-employer relations. The background, discussion, and trends are founded on legal decisions from the United States Supreme Court, federal Courts of Appeal, and state courts. In this presentation, the research procedures and chapter organizations of the dissertation are described. The reference guide is organized and presented in nine chapters: (1) contracts; (2) assignments and reassignments; (3) demotions; (4) discharge; (5) leaves of absence; (6) supplemental duties; (7) academic freedom; (8) personal freedoms; and (9) tort liability. A dissertation abstract and 21 selected citations are attached. (MLF)

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TEACHER-EMPLOYER RELATIONS:
A LEGAL REFERENCE GUIDE FOR PUBLIC SCHOOL EDUCATORS

PRESENTATION BEFORE THE NATIONAL COUNCIL OF PROFESSORS OF EDUCATIONAL ADMINISTRATION AFTER THE AWARDING OF THE EDGAR MORPHET DISSERTATION PRIZE

Tuscaloosa, Alabama August 17, 1989

GLORIA JEAN THOMAS

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GLORIA JEAN THOMAS

I am deeply honored to have been selected as a recipient of the Edgar Morphet Dissertation Award. I want to thank the members of the review committee for their efforts and the National Council of Professors of Educational Administration for making this honor possible. I am very happy to be here at my first -- but not my last -- NCPEA conference.

I owe my presence here today to the faculty members of two great universities: to the faculty of the Educational Administration Department of the University of North Dakota -- Don Lemon, Dick Hill, Larry Smiley (even if he did desert us for Central Michigan), and Don Piper -- who were willing to take a chance and hire me ABD (throughout fall semester they allowed me time and gave me encouragement as I completed my dissertation and kept telling me that the winters in North Dakota were not really so bad); I must also recognize the faculty of the Educational Leadership Department at Brigham Young University, all of whom contributed in a substantial and memorable way to my education in higher education administration. I went to BYU when on a sabbatical leave from Colorado State University, never really expecting to leave Colorado for more than that one semester. But I was convinced to stay at BYU, and I learned about leadership from men who practice and model what they teach. I especially want to express my appreciation -- long overdue -- to the chairman of the Educational Leadership Department at BYU -- Dr. Del Wasden -- and to recognize him as my education law professor, my dissertation committee chairman, my graduate assistantship supervisor, and the mentor who convinced me to change my career direction and who gave me opportunities to prepare to assume the responsibilities I now have. The type of example he was to me can be seen by his willingness to re-arrange his schedule to fly in last night and be here today.

My law-based dissertation represents a culmination of my experiences throughout my college and professional life: my undergraduate work for student rights at Idaho State University, my work in student personnel administration at four different universities during the tumultuous '70's, my emphasis on business law while earning

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an MBA, my work as a conference director at Colorado State University, and my two years as an investigator with the Utah Professional Practices Commission. From the beginning of my doctoral study at BYU, I emphasized education law and almost immediately began the case law research that evolved into my dissertation.

While working as a graduate assistant, I was asked to conduct a survey of the students in the undergraduate elementary education program to see what these prospective teachers -- all in their last semester of preparation -- knew about 35 different areas of school law. The results were predictable: with no school law course required, the 400 respondents were nearly unanimous in proclaiming ignorance of any aspect of the law. Dr. Wasden and I then thought it would be interesting to conduct a similar survey of practicing teachers and administrators and compare the results of the two studies. The results of the second survey were nearly identical to those of the first: few administrators and even fewer teachers claimed to have any knowledge of any area of school law. We took special note of one response. In answer to the question, "Where would you go for answers to legal questions?" over 95 percent of the teachers-in-training and the practicing teachers responded "to the building principal." This was disconcerting in light of the fact that nearly 90 percent of the building principals also claimed to have little or no knowledge of school law. The principals also said that they did not know of resources to help them answer legal questions that arose in the day-to-day operation of their schools.

At the time this survey was done, I was beginning to seek a dissertation topic and briefly contemplated expanding this study. However, as I began my literature review, it became obvious that such a study would not contribute significantly to the knowledge base in the field. Our pilot study had produced the same results as had national studies by Zirkel in 1978, Hoffman in 1979, Anderson and Wetzel in 1982, Sametz in 1983, Menacker and Pascarella in 1983, Scott and Zirkel in 1987, and several other doctoral studies through the last decade. All of these surveys concluded that teachers and administrators lack knowledge about school law.

So I decided to take a different approach to my dissertation. After much consultation with Dr. Wasden and the rest of my committee, I conducted a descriptive study, that is, a search for the legal principles and supporting case law pertinent to education. The result was a legal reference guide for public school teachers and administrators on one area of school law: teacher-employer relations.

The general organization of my dissertation follows a traditional pattern as closely as possible, considering its descriptive nature:

Chapter 1 introduces the topic of law, gives a justification for the study, describes the methods and procedures used, defines terms, and points out the delimitations on the study. Because the amount of secondary literature directly related to the topic of what public school educators know about school law is limited, the review of related literature became part of the justification for the study. The methods and procedures used in this study were unique; hence, this section is also found in Chapter 1. I will briefly describe the methods in a moment.

Chapter 2 is the 400-page legal reference guide, which is subdivided into 9 chapters related to teacher-employer relations. It includes a preface about education law, a guide to the handbook's use by educators, an alphabetical list of the 500 cases used, a glossary of 50 legal terms, and an index for cross referencing purposes. In other words, Chapter 2 is a handbook ready to be used by educators.

Chapter 3 returns to dissertation format with summary and recommendations.

I now want to describe briefly the most important aspects -- at least in my judgment -- of the study. I began with tracing the history of law through the last 4000 years (which I won't do today), concentrating on constitutional law as we know law in the United States. The importance of the law is summarized in this statement by Starr in 1988: "The law is with us from the moment we are hatched to the time when we are matched and finally dispatched."

The evolution of education law as a specialized topic is shown to have begun with Brown v. Board of Education in 1954 even though there are a few landmark cases that predate Brown. Statistics indicate that the number of court decisions concerning elementary and secondary school students increased 243 percent in just three years from 1977 to 1980. In the Supreme Court, the average number of education cases decided per year between 1960 and 1967 was 1.5. Since 1968 the Supreme Court has ruled on an average of 4.5 education cases per year. Between 1960 and 1986, there have been 4466 cases involving teachers and their relationships to employing school districts heard in appellate courts. The number of education cases peaked in the mid-1970's, but no significant decrease is forecast. James Leary is quoted as saying, "By 1990 half of all principals will have been named in a lawsuit -- some several times."

I then discussed reasons for this increase in case load, but I'll only provide a short list here today. Among the most obvious reasons for the increase in law-related litigation are:

1) the increase in legislation at both state and federal levels (litigation follows legislation)

2) recognition by the courts of teacher and student rights

3) continual conflict between church and state with the schools as the battleground

4) increased tort liability as governmental immunity is abrogated by courts and legislatures

5) movement of the baby boom generation through the nation's school system, bringing the woes of rapid growth and then the despair of rapid decline in enrollment

6) the expectations of society for schools to tackle the problems of highway deaths, teen pregnancy, drug use, alcohol abuse, teen suicide, AIDS, and latch-key kids

7) the lack of confidence by the public in the nation's schools when the schools fail to live up to society's expectations, spawning reform reports and a flurry of law making

8) financial crises of the 1970's when districts were faced with the need to provide access for the handicapped, to make teachers competent and accountable, to make students literate, to clear buildings of asbestos, and to computerize the budget, schedule, inventory, report cards, attendance, and the curriculum just when buildings were becoming dilapidated and obsolete and national sentiment was calling for tax cuts

9) increase in number of children with special needs and so in need of special, high cost services

10) growth of teachers' associations as powerful bargaining units leading to collective bargaining between educational groups who once were allies and who became adversaries with the school budget the divisive topic.

In other words, the courts have become the sounding board for disgruntled school boards, administrators, teachers, students, parents, and taxpayers. As Zirkel said in 1987, "the legalization of education is a fait accompli."

Teachers and administrators, therefore, need a knowledge of the legal issues in education because every aspect of their professional lives is affected by law. Failure to know education law principles may result in educators violating the rights of others or losing their own rights.

Lack of knowledge about new legislation, precedent court decisions, legal procedures, and professional rights and responsibilities puts educators who are brought into court at a serious disadvantage. To protect themselves from taking foolish actions that lead to lawsuits, from succumbing to threats of court action on spurious demands, from losing court cases because of ignorance of the law, and from being held liable for unfounded claims, educators need to understand education law.

Many teachers and administrators realize that if they had access to clear and concise information about legal issues in education, they would be better prepared -- not to defend themselves in court (that is the role of attorneys once a case reaches the court system) but to prevent situations that lead to lawsuits, to resolve conflicts before they reach litigation, and to exercise their rights and fulfill responsibilities both as private citizens and as educators.

However, a lack of resources hampers many educators from learning more about education law. College education law courses -- the one or two available -- are generally at the graduate level for administrators; few teacher preparation programs include a course in law. In-service workshops are being offered on specific topics of current interest, such as AIDS or child abuse or nonrenewal of teachers. However, many educators lack the time and money to enroll in the university courses as often as they may like, and short workshops cannot provide a cohesive framework into which the workshop topic can be fit if the participant lacks background knowledge of the legal system.

Some excellent education law textbooks have been published for use in university survey courses. However, none of the major textbooks provides a ready resource to enable teachers and administrators to take legal theory and landmark cases from the university classroom and apply them to the questions and problems of daily school life. Written

for serious students of education law, these textbooks may not be understandable or convenient to use by educators with no background in law. According to George Michel in 1987, the curriculum and texts for school law courses are too often designed for the law student (who plans to go out and defend clients in court), not for the school administrator or teacher (who most often wants to prevent going to court).

Beginning in the 1970's, most professional journals in education started including articles and regular columns about education law issues. Although these articles would keep the conscientious reader informed, the educator may not be able to glean foundation principles from monthly or weekly articles, which may lead to confusion about new court decisions reported in current periodicals.

Scarcity of resources about education law is the major reason so many educators remain unknowledgeable and even intimidated by the subject. Hence, the need is apparent for a legal reference guide for public school educators.

This reference guide is organized and presented in nine chapters, each chapter dealing with a different aspect of teacher-employer relations.

The topics are:

- Contracts
- Assignments and Reassignments
- Demotions
- Discharge
- Leaves of Absence
- Supplemental Duties
- Academic Freedom
- Personal Freedoms
- Tort Liability

Each chapter is organized in the following way:

1) historical background of the legal issue:
   What is academic freedom? Definitions in tort law, etc.

2) list of legal principles -- as few as 4 or as many as 10 -- pertinent to the legal issue
3) discussion of the case law governing each principle

4) summary of the issue, including trends apparent from case law

5) questions -- at least 10 -- related to the topic that are typical of those raised in daily school life with responses based on the case law discussion.

The historical background of the issues came from some secondary sources but primarily from cases where justices explained the development of an issue as part of the rationale for decisions.

The legal principles used for guiding the gathering of data from case law and organizing the results of the research were adapted from those derived by Dr. David J. Sperry of the University of Utah in 1984 and forwarded to Dr. Wasden prior to Dr. Sperry being called out of the country for three years. The principles for each issue were simplified and rewritten in terms appropriate for teachers and administrators who have not had extensive preparation in education law. Where emerging law implied that the original principles did not adequately cover the topic, additional principles were written. Permission for my use of the legal principles for this purpose was granted by Dr. Sperry.

The questions at the end of each chapter were compiled from lists of questions asked by students in education law courses that I team taught with Dr. Wasden, from those original surveys of undergraduate students in education, and from my experiences as Assistant Executive Secretary with the Utah Professional Practices Commission.

This reference guide uses a case law approach to understanding the issues involved in teacher-employer relations. In other words, the background, discussion, and trends are founded on legal decisions from the United States Supreme Court whenever the high court has ruled on the issue, or on decisions from the United States Courts of Appeal and from the highest courts of appeal in states regarded as leaders in determining educational policy.

Of course, the use of case law introduces some of the limitations on the use of the reference guide. Whenever any court decision besides that of the United States Supreme Court is cited, caution must be observed. Although courts will look to other jurisdictions for guidance in ruling, they have no legal obligation to follow the direction of a court of equal or lesser authority. Among the recommendations made is one that suggests that these same principles be used with state law and state case law to develop a handbook for a specific state.

This reference guide addresses only education law issues related to teacher-employer relations. The scope is further narrowed to consider only the rights and responsibilities of individual teachers, not teacher organizations. Other education law issues, notably student rights, parental rights, governance, and finance, are not addressed. Another recommendation, upon which I am currently acting, is to develop principles and write a guide for teacher-student relations.

The handbook deals only with employment issues related to certificated teachers and administrators, not classified or support staff. Legal issues of teachers and employers in private schools are not addressed nor are those of insititutions of higher education, day care centers, preschools, or other education agencies. The scope of the study is limited to public elementary and secondary schools.

The legal principles used as the foundation of this study are long standing and based on well-established case precedent. Although case law may now change -- perhaps even rapidly --the principles will be longer lasting. However, future court decisions may expand and change the principles or alter the interpretation and application of them, and they may have to be changed accordingly.

My hope would be, however, that were a reference guide such as this one readily available and used by administrators and teachers that when new teachers need legal advice, an experienced teacher or administrator will have a resource on which to depend for understandable, accurate responses.

DISSERTATION ABSTRACT

TEACHER-EMPLOYER RELATIONS: A LEGAL REFERENCE GUIDE FOR PUBLIC SCHOOL EDUCATORS, 1988

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December 1988

Doctoral Committee Chairman: F. Del Wasden

Teachers and administrators need a knowledge of the legal issues in education because every aspect of their professional lives is affected by law. Failure to know education law principles may result in educators violating the rights of others or losing their own rights. Although educators no longer sign away their constitutional rights when they sign their contracts, lack of knowledge about legal issues in education may result in their fearing to exercise those rights and in their defaulting on their responsibilities (Berger, 1985; Daniel, 1985; Fillichio, 1988; Garrison & Hardin, 1973; Hazard, 1974).

Teachers and administrators are frequently named as defendants in education cases coming before the courts, and common law doctrines of governmental immunity no longer protect them from lawsuits. Lack of knowledge about new legislation, precedent court decisions, and professional rights and responsibilities puts educators who are brought into court at a serious disadvantage. To protect themselves from taking foolish actions that lead to lawsuits, from succumbing to threats of court action on spurious demands, from losing court cases because of ignorance of the law, and from being held liable for unfounded claims, educators must understand education law (Clay, 1984; Dunklee & Shoop, 1986; Epley, 1985).

One of the expectations of schools is that they prepare students for citizenship in a democratic nation. When educators themselves do not understand their own or their students' rights and responsibilities under the law, students may not learn that citizenship is an important privilege with corresponding rights and responsibilities (Anderson & McKinney-Browning, 1982; Meade, 1979; Naylor, 1979; Sametz, 1983).

The area of education law most pertinent to teachers, administrators, and school boards is teacher-employer relations. Between 1960 and 1986, 4466 cases involving teachers and their relationships to their employing school districts were heard in appellate courts (Hooker, 1988). Lack of knowledge on the part of either the teacher or the employer about their legal relationship may result in infringement of rights, abdication of responsibility, or resort to the courts for resolution of legal problems.

Several studies have been conducted that indicate the extent of prospective and practicing teachers' and administrators' lack of knowledge about education law (Anderson & Wetzel, 1982; Menacker & Pascarella, 1983; Sametz, Mcloughlin, & Streib, 1983; Scott & Zirkel, 1987). For example, the mean score on a 20-item test administered to 100 Phi Delta Kappa members was 50% (Zirkel, 1978).

The reasons for this lack of knowledge about education law issues are many. The mystique that surrounds the legal profession often hampers teachers and administrators from seeking knowledge about legal issues. Legal terminology and procedures may seem complicated and undecipherable to the uninitiated. Limited legal experience may lead educators to believe that legal issues are best avoided until a lawsuit is pending at which time an attorney is retained to take over all responsibility for filing a complaint or defending an interest.

Lack of sources hampers many educators from learning more about education law. Education law courses are often not required for degrees or certification. The one or two courses available are

usually survey courses where the broad concepts of all education law issues are covered. In-service workshops often lack a cohesive framework of education law into which a workshop topic can be fit if the participant does not already have background knowledge in the legal system, legal principles, and case law. Some education law textbooks have been published for use in university survey courses. However, none of the major textbooks provides a ready reference for teachers and administrators who must take the legal theory from the university classroom and apply it to the questions and problems that arise daily in their schools. West's Publishing Company and the National Organization on Legal Problems in Education both publish information about education law. However, most school administrators do not have access to these publications because of lack of resources to fund individual subscriptions or lack of access to law libraries.

Educators need a comprehensive, organized legal reference guide written in terms applicable to the basic questions and problems that face them daily. In particular, teachers and administrators need access to information about the legal relationship that exists between teachers and their employers. Access to principles that govern legal decisions about employment issues, major case law pertinent to the issues, and trends in the law relative to teacher-employer relations would clarify and de-mystify the law for teachers and administrators. A guide that anticipates the legal questions educators are most likely to ask in the daily conduct of the schools and then responds to those questions would become a ready reference for educators who would then be able to exercise their rights and to fulfill their responsibilities with the confidence that comes from possessing technically critical knowledge.

The purpose of this study was to provide a legal reference guide to inform public school educators about selected issues related to teacher-employer relations. Teacher-Employer Relations: A Legal Reference Guide for Public School Educators, 1988 is such a reference guide.

Research Procedures

This study used a case law approach to understanding the issues involved in teacher-employer relations. The background, discussion, and trends are founded on legal decisions from the United States Supreme Court whenever the high court has ruled on the issue or on decisions from the federal courts of appeal and from the highest courts of appeal in states regarded as leaders in determining educational policy.

To determine what written legal resources were available for educators, textbooks commonly used in graduate courses in education law and supplemental handbooks on education law were reviewed. In addition, all issues published since 1975 of 22 education journals were examined for education law topics and the scope, accuracy, and context of the coverage. The literature review also includes commentaries published in all volumes to date (1-48) of West's Education Law Reporter. Case law research involved Education Law Reporters, regional reporters, and national law reporters.

The product of this descriptive study was a legal reference guide for teachers and administrators of public schools. Addressing the major issues in teacher-employer relations as determined from the literature review, the material was organized and presented in nine chapters:

Contracts
Assignments and Reassignments
Demotions
Discharge
Leaves of Absence
Supplemental Duties
Academic Freedom
Personal Freedoms
Tort Liability

Each chapter was organized in the following manner:

a. historical background of the legal issues related to the chapter topic

b. list of legal principles
c. discussion of the case law governing decisions about each principle
d. summary of the issue, including trends in the development of the issue
e. questions related to the topic with responses based on the case law discussion

The reference guide includes a short introduction to education law, a glossary of legal terms, a topical index, and an alphabetical list of all cases referenced in the text.

The legal principles used for organizing and gathering data for the reference guide were adapted from those derived by Dr. David J. Sperry, Professor, University of Utah, from Education Law and the Schools: A Compendium (Sperry & Gee, 1978). The principles for each issue were simplified and rewritten in terms appropriate for teachers and administrators who have not had extensive preparation in education law. Where emerging law implied that the original principles did not adequately cover the topic, additional principles were written. Permission to adapt the principles to this purpose was granted by Dr. Sperry.

The questions at the end of each chapter were compiled from queries from students in education law courses and seminars, topics addressed in the literature, and issues addressed in hearings before the Utah Professional Practices Advisory Commission. The responses were based on case law as generalized from decisions most closely related to the issues raised in the question.

Conclusions and Recommendations

School boards and state offices of education need to ensure that teachers and administrators have access to a legal reference guide. This reference guide was written to meet the needs of teachers and administrators for information in this area of education law. Its primary purpose is to be a useful reference for practicing teachers and administrators, a guide to which they may turn for the legal principles, case law, and trends in teacher-employer relations. The questions and responses may suggest approaches to resolving problems or defusing conflicts before they become legal crises. Although not a substitute for experienced, authoritative legal advise from a licensed attorney, especially should a lawsuit arise, this reference guide may provide the user with a broad overview of the interrelationships of the legal issues in teacher-employer relations as well as specific information about particular topics. School board members may also benefit from having access to this legal guide.

A second use for this reference guide is for in-service workshops for educators. The legal principles provide a foundation upon which seminars may be based, and the questions and responses may lead to discussion of local issues and problems. Educators who attend professional development workshops on legal issues may be able to apply workshop data more effectively if they have a complete reference guide available for later use.

Although a few excellent textbooks on school law have been published, they generally are theoretical and only general references to education law. This reference guide provides basic information about legal principles to acquaint the future and novice teacher and administrator with the critical issues in teacher-employer relations. After an introductory law course, new and experienced educators may use the book as a ready reference. For administrator preparation programs, the book may be used as a supplementary text for the specific topic of teacher-employer relations.

This reference guide addresses only one broad section of the field of education law. Similar reference guides are needed for the areas of teacher-student relations and teacher-governance issues. Teachers and administrators in private schools, higher education, and pre-schools may also benefit from similar guides applicable to their educational settings. Because this reference guide is national in its scope of issues in education law and application of case law, teachers and administrators must use its principles within a framework of their particular state laws. A handbook applying the same legal principles to the case law and statutes of each particular state would be an asset for the educators of the various states. This reference guide is current as of 1988; the information would have to be updated periodically as new legislation and court decisions impact education.

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